

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

IN RE:

CASE NO.

JAMES DANIEL MELVIN, JR.

05-02621-8-ATS

DEBTOR

JOHN S. HAIR, SR.

Plaintiff

ADVERSARY PROCEEDING NO.

v.

S-05-00110-8-AP

JAMES DANIEL MELVIN, JR.

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

The matter before the court is the defendant's motion to dismiss. A hearing took place in Fayetteville, North Carolina on September 29, 2005.

James Daniel Melvin, Jr. filed a petition for relief under chapter 7 of the Bankruptcy Code on April 1, 2005. On June 4, 2005, John S. Hair, Sr. filed the complaint initiating this adversary proceeding to determine the dischargeability of a debt pursuant to 11 U.S.C. § 523. The summons and complaint were served on Mr. Melvin on June 29, 2005, but because this exceeded the 10-day time for service, a new summons was issued on August 2, 2005. On August 8, 2005, the plaintiff filed a Certificate of Service executed by Deputy Sheriff Corporal Ellen F.

Gerber, which stated that Mr. Melvin was personally served on August 3, 2005, while he was sitting in his car at a traffic light.

Mr. Melvin filed a pro se motion to dismiss for insufficiency of service pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, made applicable in this adversary proceeding by Rule 7012 of the Federal Rules of Bankruptcy Procedure. Mr. Melvin contends that while he was served with the complaint, he was not served with the summons.

The court finds the certificate of service executed by an experienced deputy sheriff to be credible and concludes that Mr. Melvin was properly served with the summons and complaint. Accordingly, the motion to dismiss is **DENIED**.

SO ORDERED.

DATED: September 30, 2005


A. Thomas Small
United States Bankruptcy Judge